REMARKS

Claims 7-13 remain pending in the present application. No claims have been amended.

CLAIM REJECTIONS UNDER 35 U.S.C §103(a)

The Examiner has rejected Claims 7-9 and 11-13 under 35 U.S.C. §103(a) alleging them to be unpatentable over Shibuya (JP 2002-187406) in view of at least one of Mizukoshi et al. (U.S. Patent No. 5,975,767) or Japanese Reference 57-194805 (hereinafter JP '805).

Claim 7 defines a semi-floating vehicle wheel bearing apparatus coupled with an axle housing structured as a unit of a wheel hub and a double row rolling bearing. It includes, among other elements, a partition wall integrally formed on the wheel hub at its outboard side to close out the outboard side end of the central bore of the wheel hub. The partition wall increases the rigidity of the wheel hub to suppress an elastic deformation of the wheel hub even though the moment load is applied to the wheel hub during running of the vehicle. The partition wall prevents the ingress of rain water or dust from an end portion of a drive shaft and thus into the differential gear.

The Examiner's combination, specifically Shibuya in view of Mizukoshi et al. or JP '805, fails to illustrate Applicant's claims. None of the references illustrate a partition wall on the outboard side of the central bore of the wheel hub. None of the references illustrate the partition wall increasing the rigidity of the wheel hub to suppress an elastic deformation of the wheel hub even though the moment load is applied to the wheel hub during the running of the vehicle.

The Shibuya reference illustrates a semi-floating vehicle wheel bearing apparatus. It includes a cap 38 that is positioned into the bore of the wheel hub. When the moment load is applied to the wheel hub flange, there is a possibility for the cap to shift enabling leakage of fluid from inside of the wheel hub. The combination of Mizukoshi et al. or JP '805 fails to overcome the deficiencies of Shibuya. Both the Mizukoshi et al. and JP '805 illustrate partition walls on the inboard side of a non-floating wheel bearing apparatus that includes a constant velocity joint. The partition divides the constant velocity joint from the wheel hub. Further, when the moment load is applied to the wheel hub, an inboard side of the wheel mounting flange is the weakest area. Thus, by having the inboard side of the partition wall substantially coplanar with an inboard side of the wheel mounting flange, Applicant's device provides the increased rigidity. This is not illustrated by the Examiner's combination.

The Examiner suggests that one skilled in the art would substitute the teaching of Mizukoshi et al. or JP '805 for the Shibuya reference. However, while the three references relate to wheel bearing apparatus, they relate to different types of wheel bearing apparatus.

In Ex parte Janson and Baldwin, Appeal No. 2010-009939, Application No. 11/973,594, the court found that the Examiner had failed to provide a sufficient rational underpinning or factual basis to support the combination but instead based his position upon doubt that the claimed invention was unpatentable. In Baldwin, the Examiner combined two references in the transmission art. However, the two references dealt with two completely different transmissions. Thus, the court found that the Examiner had failed to provide interrelated teachings of the two patents, the facts or

demands known to the design community that are present in the marketplace or the background knowledge possessed by a person having ordinary skill in the art asked to support the rationale to make the proposed modification.

In the instant application, the Examiner has failed to provide a sufficient rational underpinning or factual basis to support his combination. The Examiner provides two types of bearing apparatus references. One illustrates a semi-floating design, the other illustrates a non-floating design with a constant velocity joint. The Examiner has failed to provide the requisite rational underpinning or factual basis to support the combination. Thus, the Examiner's combination alleging obviousness cannot stand. Accordingly, Applicant believes Claim 7 as well as Claims 8-13 which depend from Claim 7 to be patentably distinct over the art cited by the Examiner.

Claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Shibuya in view of Mizukoshi et al. or JP '805 further in view of Yamamoto (U.S. Patent No. 7,255,482).

The combination of Yamamoto with Shibuya and either Mizukoshi et al. or JP '805 fails to overcome the deficiencies of the three references. Accordingly, Applicant believes Claim 10 to be patentably distinct over the art cited by the Examiner.

In light of the above amendments and remarks, Applicant submits that all pending claims are in condition for allowance. Accordingly, Applicant respectfully requests the Examiner to pass the case to issue at his earliest possible convenience.

Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

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